

prior to the submission of the case for the jury's consideration; that the case was discussed before the juror; and that there was misconduct on the part of the juror in that the matter was not called to the attention of the court. The claimant filed notice of appeal on 7-16-57.

On 8-23-57, the district court entered a decision with respect to the claimant's second motion for a new trial, as follows:

MILLER, *District Judge*: "On May 28, 1957, an opinion and order was filed denying the claimant's motion for new trial. The claimant on July 9, 1957, pursuant to Rule 59 and Rule 60 of the Federal Rules of Civil Procedure, filed a second motion for a new trial and on July 16, 1957, filed notice of appeal. The filing of the notice of appeal vests jurisdiction over the cause appealed in the Court of Appeals and this court has no power to take other action affecting the cause without permission of the Court of Appeals, except insofar as jurisdiction is expressly reserved in the district court by statute or the Federal Rules of Civil Procedure. See *In the Matter of Federal Facilities Realty Trust Company, et al., Appellant vs. Jacob Kulp, et al., Appellees*, 227 F. 2d 651 (7 Cir.)."

On 8-29-57, the claimant filed a motion to remand the cause to the trial court, so that a hearing on the second motion for a new trial might be had in the district court. The United States Court of Appeals for the Third Circuit, after a hearing, entered an order denying the motion on 9-4-57.

On 9-5-57, the claimant filed a motion for amplification of the order, denying the motion to remand, and on 9-10-57, filed a motion to strike the Defender Magazine as part of the record on appeal. These motions were denied by the court of appeals on 9-23-57.

On 10-4-57, the claimant and the Government filed an agreement to dismiss the appeal; the court of appeals entered an order on 10-7-57 dismissing the appeal, the costs to be assessed against the appellant.

On 10-22-57, the district court entered an order directing the marshal to destroy the tablets and the accompanying labeling.

**5213. Digitalis tablets.** (F. D. C. No. 39515. S. No. 46-899 M.)

**QUANTITY:** 1 btl. containing 14,000 tablets at Philadelphia, Pa.

**SHIPPED:** 8-30-56, from Camden, N. J., by Olmstead Labs.

**RESULTS OF INVESTIGATION:** Examination of the article showed that it had a potency of 1.06 grs. of U. S. P. digitalis per tablet.

**LBELED:** 10-10-56, E. Dist. Pa.

**CHARGE:** 502 (a)—the statement on the label of the article, when shipped, namely, "Tablets Digitalis U. S. P. 1½ Grains," was false and misleading.

**DISPOSITION:** 11-5-56. Default—destruction.

**5214. Manganese dioxide.** (F. D. C. No. 39069. S. Nos. 41-358/60 M.)

**QUANTITY:** 1 20-lb. drum, 10 4,000-tablet btls., 1 2,000-tablet btl., and 7 1,000-tablet btls. at Buffalo, N. Y., in possession of Jopp Pharmacal Co., Inc.

**SHIPPED:** 8-1-55, from Phillipsburg, N. J.

**LABEL IN PART:** (Drum) "Manganese Dioxide, Technical \* \* \* Powder \* \* \* For Manufacturing Use Only": (btl.) "Jopp's Tablets Manganese Dioxide C. P. (MnO<sub>2</sub>) Each Capsule contains Manganese Dioxide 5 grs. combined with 2½ grs. Sodium Bicarbonate and Aromatics."

**RESULTS OF INVESTIGATION:** The article had been shipped in bulk in powdered form, and upon arrival at Buffalo, N. Y., the consignee tableted and repack

aged the drug into bottles labeled as above. The consignee also encapsulated some of the bulk powder.

**LIBELED:** 5-9-56, W. Dist. N. Y.

**CHARGE:** 502 (a)—the label of the article, while held for sale, contained the statements, "Highly recommended in Diabetes treatment" and "Manganese Dioxide C. P.," which were false and misleading since the article was not an adequate and effective treatment for diabetes and the article was a technical grade of manganese dioxide.

**DISPOSITION:** 8-28-56. Default—destruction.

**5215. Al-Co-Way Tablets.** (F. D. C. No. 38702. S. No. 28-045 M.)

**QUANTITY:** 66 btls. at Columbus, Ga., in possession of Ernest C. Fokes, t/a Primary Products Co.

**SHIPPED:** During April 1955, from New York, N. Y.

**LABEL IN PART:** (Btl.) "50 Al-Co-Way Tablets Caffeine Citrate And Thiamin Hydrochloride To Discourage Excessive Use of Alcoholic Beverages \* \* \* Dist. By Primary Products Co. Columbus, Ga."

**RESULTS OF INVESTIGATION:** The article was shipped in bulk to Columbus, Ga., and after its receipt it was repackaged and relabeled by the consignee.

**LIBELED:** On or about 11-28-55, M. Dist. Ga.; libel amended on or about 2-15-56.

**CHARGE:** 502 (a)—the statement on the label of the article, while held for sale, namely, "Al-Co-Way Tablets \* \* \* To Discourage Excessive Use Of Alcoholic Beverages" was false and misleading since the statement represented and suggested that the article was an adequate and effective treatment for alcoholism, whereas the article was not an adequate and effective treatment for alcoholism.

**DISPOSITION:** Ernest C. Fokes, as owner of the article, filed an answer denying that the article was misbranded. The Government served written interrogatories upon the owner, and on 4-14-56, the owner filed answers to some interrogatories and objections to the remainder of the interrogatories. A hearing was held on the objections, and on 8-20-56, the court ordered that all objections be sustained, with the exception of the objections relating to two of the interrogatories. The case was tried before the court and jury on 9-12-56, and at the conclusion of the trial, the jury returned a verdict for the Government. On 12-28-56, the court entered a decree ordering the destruction of the article.

**5216. Prof. Black's Honey and Tar Red Pepper and Rum.** (F. D. C. No. 39673. S. No. 47-887 M.)

**QUANTITY:** 38 6-oz. btls. at Sussex, N. J.

**SHIPPED:** 10-4-56, from Middletown, N. Y., by O. C. Prior-King.

**LABEL IN PART:** (Btl.) "Prof. Black's Honey and Tar Red Pepper and Rum."

**LIBELED:** 11-8-56, Dist. N. J.

**CHARGE:** 502 (a)—the bottle label of the article, when shipped, contained false and misleading representations that the article was an adequate and effective treatment for overcoming colds, coughs, sore throat, quinsy, diphtheria, and all throat and lung complaints, and for preventing pneumonia, pleurisy, and consumption.

The libel alleged also that another article. imitation vanilla flavor, was adulterated under the provisions of the law applicable to foods, as reported in notices of judgment on food.